

DOCKET NO. 2000-366-A - ORDER NO. 2001-630

We would note with interest that the brief of the Budget and Control Board appears to propose for the first time many of the original

adjustments of Consumer Advocate witness Andrea Crane. Again, Ms. Crane stated that the Consumer Advocate would not be opposed to this Commission adopting Staff's adjustments. Tr., Vol. III, Crane at 338, **despite certain arguments to the contrary in the Consumer Advocate's Brief...** (Emphasis added).

The Consumer Advocate expresses a concern about the characterization of its position, in that it believes that our characterization implies a lack of reliability or credibility. The Consumer Advocate then requests that we amend Order 2001-499 by deleting the language in bold type as stated above, and by noting that Ms. Crane recommended that the Commission adopt most of Staff's adjustments.

We certainly did not intend to imply a lack of reliability or credibility on the part of the Consumer Advocate. Therefore, we grant the Consumer Advocate's request. We hereby order that Order No. 2001-499 is amended to delete the language stated in bold above. The sentences from which the two portions in bold type are deleted shall end just prior to where the bold language appeared. We also duly note that Ms. Crane recommended that the Commission adopt most of the Commission Staff's adjustments.

The Atlantic Compact Commission filed a Petition for Reconsideration or Clarification. First, the ACC alleges that this Commission committed an error of law by failing to rule on the record before us that Chem-Nuclear is not entitled to recover "Barnwell Operating Rights" as allowable costs under the provisions of the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act. The ACC states that a full record was developed in this docket on the matter, and that we should rule as a matter of law that there may be no recovery for the amortization of "Barnwell Operating Rights."

In the alternative, the ACC requests that we clarify that Order No. 2001-499 made no final ruling on Operating Rights, that our further consideration of that issue will be conducted in this docket, and that any discussion concerning Operating Rights in Order No. 2001-499 is interlocutory. We deny the ACC's first request for relief, but grant the alternative request.

Order No. 2001-499 contained the following language:

At this time, Chem-Nuclear has failed to adequately demonstrate to this Commission that Operating Rights are a known and measurable cost. Tr., Vol. IV, Blume at 876. Chem-Nuclear has failed to provide adequate testimony to convince this Commission that the Operating Rights provide a benefit to the customers of Chem-Nuclear. Id. at 877. We further reject the calculation of Operating Rights, since future cash flows were discounted by 15%, which we consider unrealistic, and the inclusion of an additional 29% fixed operating margin. Id. at 876. There was no evidence in the record that supports the reasonableness of the 15% figure. Further, although Chem-Nuclear's Brief offered to rescind the additional 29% operating margin, the overall testimony of Staff witness Blume convinces us that the adjustment should be rejected, at least at this time. (emphasis added). However, as will be seen infra in this Order, a further hearing will be held with regard to fixed and variable costs later this year. Prior to this hearing, Chem-Nuclear shall submit to this Commission specific information and a categorical breakdown on the items which comprise Operating Rights. During the next hearing this year, this Commission shall re-evaluate whether the proposed Operating Rights provide a direct benefit to the disposal of wastes. If the Commission should find that certain or all of the Operating Rights are allowable, this amount shall be added to the allowable fixed costs for the 2001 fiscal year and beyond. Order No. 2001-499 at 24-25.

It was clearly the intent of this Commission to allow Chem-Nuclear Systems an additional opportunity to develop a "full and complete record" concerning the items which comprise Operating Rights. This Commission agrees with Chem-Nuclear System's Return in this matter that such a subsequent hearing and consideration of this matter is well within the authority of the Commission. Implicit in the original Order in this matter

was the understanding that Chem-Nuclear Systems failed to understand the burden of proof required by this Commission. Having never appeared before this Commission, nor ever having been subject to such economic regulation, Chem-Nuclear Systems should be afforded another opportunity to provide the required specific and categorical information to the Commission. Additionally, our original Order in no way guarantees Chem-Nuclear Systems reimbursement of any Operating Rights, only the opportunity to further present and explain their case. We agree with the alternate position of ACC that no final ruling has been made on the Operating Rights issue, and that further consideration of the matter will be in this Docket. The discussion of Operating Rights in Order 2001-499 is definitely interlocutory.

We would note that the Board also filed a Petition for Reconsideration or Clarification and/or Amendment regarding several issues. One of these issues was Operating Rights. Insofar as the prior paragraphs clarify our position on the Operating Rights issue, we grant clarification, and we reaffirm the position taken in the prior paragraphs on the subject that our holding on the matter in Order No. 2001-499 was interlocutory, and Chem-Nuclear must provide more information for our consideration.

We note additional testimony of William Blume with interest. Blume states that the concept of Operating Rights is very similar to an asset known as an acquisition adjustment. Blume notes that acquisition adjustments can occur whenever one regulated company purchases another and pays in excess of the book value of the assets being purchased. The excess of cost over book value can be allowed for write off. This Commission determines the allowed write off period in these cases when setting rates for

a regulated company. In order for the Commission to both consider and allow an acquisition adjustment, according to Blume, the Applicant must convince the Commission that the purchase benefits not only the Company, but also the customers of the Applicant. Blume opined that the Company in this case is still offering the same service that it did prior to the purchase by GTS Duratek and that no acquisition adjustment should be allowed. However, Blume notes, if arguments on this issue do lead the Commission to consider allowing recovery for this asset, Staff recommends that there be a sharing of costs between the Company's stockholders and the customers of Chem-Nuclear. Tr., Vol. IV, Blume at 876-877. In the next hearing, Chem-Nuclear will have an opportunity to convince the Commission that the purchase benefited in this case not only the Company, but the customers of the Company as well.

We would note that Blume also recommended that some sort of true-up mechanism be adopted by this Commission in his original testimony. Id. at 888. In Order No. 2001-499, we stated that a hearing shall be required each year to adjust or true-up variable costs and to make any required changes to the fixed costs of the Company. Order No. 2001-499 at 33. We reiterate our determination to hold such a hearing later this year in this Docket, and we hereby modify our Finding and Conclusion No. 3 at page 28 of Order No. 2001-499 to declare that it shall now herein be modified to be made consistent with our discussion of Operating Rights on Pages 24-25 of that Order, and that the language on Pages 24-25 shall govern.

The Board also takes issue with this Commission's findings on the issues of insurance and Management Fees/G&A Allocation in Order No. 2001-499. We deny

rehearing and/or reconsideration. We believe that allowance of these costs is clearly permitted by S.C. Code Ann. Section 48-46-30(1) (Supp. 2000), which specifies “any other costs directly associated with disposal operations determined by the Commission to be allowable” are allowable costs. With regard to the insurance premiums, we hold that a common sense application of the statute must prevail concerning the benefits of the additional insurance premiums versus the incremental gains to the State of disallowing this cost. Clearly the insurance premiums are a necessary disposal cost in any event, since they are directly associated with disposal operations. Insurance coverage against pollution legal liability certainly fits the legal criteria for a disposal cost, since it insures against certain potential consequences of the disposal operation.

With regard to allocations, we noted in Order No. 2001-499 that the Commission Staff had reviewed all allocations to the Company from all sources including Tier II allocation during its audit, and removed any and all inappropriate items that it found during the review of such allocations. (Staff described its methodology in detail. See Tr., Vol. IV, Blume at 879-885). We then adopted Staff’s adjustments for determining what allocations were allowable costs. Order No. 2001-499 at 26-27. We see no reason to change our minds now. We simply weighed all the evidence in the case on this issue, and chose the position of the Commission Staff over that taken by the Budget and Control Board witness. We are not convinced by the Board’s Petition that this holding should change.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)